

DECISION



24959
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-208763

DATE: April 22, 1983

MATTER OF: Logistical Support, Inc.

DIGEST:

Protester has not met burden of showing that experience requirement in solicitation was in excess of minimum needs or unduly restricted competition.

Logistical Support, Inc. (LSI), protests request for proposals (RFP) No. N00406-82-R-1361 for food service at the Navy Regional Medical Center (NRMC), Bremerton, Washington.

The RFP was issued in conjunction with Office of Management and Budget (OMB) Circular A-76. LSI protests that the mandatory minimum company experience requirements are in excess of minimum needs and are unduly restrictive of competition. The provision at issue is a definitive responsibility criterion which requires that the low responsible offeror demonstrate satisfactory performance of at least two hospital food service contracts involving dietary patient care and have a minimum of 5 years experience in acute care hospitals.

We deny the protest.

The determination of the Government's minimum needs, the method of accommodating them and the technical judgments upon which those determinations are based are primarily the responsibility of the contracting officials who are most familiar with the conditions under which the supplies and services have been used in the past and will be used in the future. Generally, when a specification has been challenged as unduly restrictive of competition, it is incumbent upon the procuring agency to establish prima facie support for its contention that the restrictions it imposes are reasonably related to its needs. But once

025403

the agency establishes this support, the burden is then on the protester to show that the requirements complained of are clearly unreasonable. Amray, Inc., B-208308, January 17, 1983, 83-1 CPD 43; S.A.F.E. Export Corporation, B-207655, November 16, 1982, 82-2 CPD 445; Walter Kidde, Division of Kidde, Inc., B-204734, June 7, 1982, 82-1 CPD 539.

We note that NRMHC is attempting to contract for the first time for the delivery of dietetic and food services at Naval hospitals under OMB Circular A-76. The Navy determined that the mandatory minimum company experience requirement was needed to provide reasonable assurance of adequate performance of an essential and sensitive service relating to the quality of patient care, the delivery of food service to hospital patients. In addition, the Navy expresses concern that failure of a vendor to provide adequate food services would result in NRMHC losing its Joint Commission on Accreditation of Hospitals (JCAH) accreditation.

The JCAH provides a uniform system of standardization designed to ensure that high quality medical care exists in hospitals throughout the United States. The Navy Bureau of Medicine and Surgery which administers Naval medical services has stated as its policy "that, to the extent practical within available resources, all Naval Regional Medical Centers and Hospitals will meet the standards and be accredited by the Joint Commission on Accreditation of Hospitals." The Navy reports that the failure to obtain JCAH accreditation will have serious consequences for NRMHC. First, loss of accreditation would result in the loss of the hospital's automatic Medicare eligibility rating since JCAH standards are specifically referenced in the Medicare Act of 1965. Second, lack of accreditation affects Medical Care Recovery Act third party liability as well as malpractice claims and litigation. Third, the ability to attract personnel for training programs and to provide quality training programs would be adversely affected. Finally, the Navy argues that there would be a widespread loss of confidence in the ability of NRMHC to provide quality health care to its patients because of unfavorable publicity due to the loss of accreditation.

Because of the potential adverse consequences from failure to qualify for accreditation, the Navy concludes that it is reasonable to require the experience solicited so that the Navy can ensure, to the fullest extent possible, that a food vendor with experience and proven reliability at a hospital will receive the award.

In our view, the above constitutes prima facie support for the experience requirement. LSI does not directly rebut the validity of the Navy's concerns. LSI asserts that the current competency and ability of a company, not necessarily the prior experience of a firm, are the relevant factors for judging future performance and that experience in other settings, not just hospital experience, is equally valid experience, when evaluating for future performance.

The protester has not sustained the burden of proving the Navy's determination of its minimum needs was unreasonable. In our view, the fact that the Navy is attempting to convert from in-house to commercial contracting without any lessening of hospital standards, the risks if accreditation is lost, and the hospital's need to provide quality health care justify the experience requirements in the RFP. While it may be true that a firm with unrelated or no experience in a hospital could satisfy the Navy's needs, we think it is reasonable for the Navy, in determining which firm most likely can perform the work, to anticipate that an offeror with directly related hospital experience will perform the job satisfactorily, consistent with accreditation standards. Where an explanation by the contracting agency shows that an experience requirement is based upon health, morale and well-being considerations, we have found it to be reasonable and not arbitrary. Kleen-Rite Corporation, B-183505, July 7, 1975, 75-2 CPD 18.

for Harry D. Can Cleve
Comptroller General
of the United States